

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RECEIVED
2006 MAY -1 A 9:49

JEFFERY BAKER JR,

Petitioner,

vs.

RUSSELL THOMAS, Sheriff, et, al

Respondents.,

*
*
*
*
*
*
*
*
*
*

CIVIL ACTION NO.
2:06-CV-61-ID

AFFIDAVIT
IN SUPPORT OF REPLY

Before me, the undersigned NOTARY personally appeared Jeffery Baker Jr, who after being duly sworn, states the following:

My name is Jeffery Baker Jr, and I am above 21 years of age. I have personal knowledge of the information contained in this affidavit. I make this affidavit to support the reply to respondents answer. In which, Respondents contend affiant is procedurally barred from federal habeas review because affiant did not present the claim to the Supreme Court following the denial of the rehearing petition before the Court of criminal appeals of Alabama. Affiant avers the procedural bar is due to factors external to his control.

On December 16, 2005, the affiant received his mail at 1353 County Road 3348, better known as "Baker Road" in Pike County, Brundidge, Alabama. I am personally acquainted with the United States Post Master for the United States Postal Service at Brundidge, and am personally acquainted with both rural postal carriers for my postal route. I am personally acquainted with all of my neighbors and prior to December 16,

2005, and to this present day, prompt notification and/or delivery of mail incorrectly deposited in neighbors mail receptacles are forthwith delivered to the proper addressee, or returned through the United States Postal Service. I receive all my mail, properly addressed or not, and bearing the name Jeffery Baker Jr, at the said address on Pike County Road 3348 (Baker Road). Prior to December 16, 2005, and up to January 20, 2006, I collected all mail delivered into the mail receptacle at 1353 Pike County Road 3348 in Brundidge, Alabama 36010, lawfully named "Baker Road." Under the penalty of perjury, I hereby swear, no order or notice respecting the denial of the Rehearing petition issued by the Court of Criminal on or about December 16, 2005 has been delivered by the United States Postal Service to my mail receptacle on Pike County Road 3348, (Baker Road), in Brundidge, Alabama. I further swear, that no other person has collected mail from my mail receptacle at the said address. To my personal knowledge, no resident residing on, County Road 3348 (Baker Road) in Pike County, Alabama, has collected the mail from my mail receptacle, nor has any resident residing on Pike County Road 3348 received my mail at their mail receptacles before or after December 16, 2005, to my personal knowledge. I have conducted personal inquiries with the residents on Baker Road in an effort to ascertain whether any mail from the Court of Criminal Appeals of Alabama has come into their mail receptacles between December 16, 2005, and January 6, 2006. According to the information collected, no resident residing on Pike County Road 3348, Baker Road, has had delivery of or mail addressed to the undersigned affiant placed in their mail receptacles from the Court of Appeals or otherwise. I have made personal contact with my rural postal carriers regarding any mistake that may have occurred between December 16, 2005, and January 6, 2006, and they inform affiant that

all mail addressed to County Road 3348 bearing the name surname Baker is delivered to my mail receptacle on said County Road, named Baker Road in Brundidge, Alabama. In fact, they state, "we all know you." The rural Postal Carriers for affiant's postal route are prepared to state the same under oath.

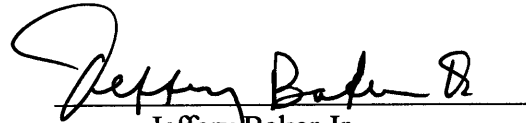
On January 6, 2006, Affiant received the Certificate of Judgment issued on January 4, 2006, by the Court of Criminal Appeals certifying the judgment as final at my postal receptacle on Pike County Road 3348. Prior to the filing of the Rehearing petition and the Court's denial, all mailings from the Court were received the next day of issuance at affiant's mail receptacle. To Affiant's knowledge, with the exception of the Rehearing denial, no other order or mail from the Court of Criminal Appeals has failed delivery to affiant's mail receptacle on Pike County Road 3348. Upon receiving the Certificate of Judgment, I immediately contacted the Clerk's office to ascertain whether the court had made any decision on the petition for Rehearing submitted October 11, 2005. The Clerk's office informed affiant that the rehearing petition had been denied December 16, 2005. Upon discovering the rehearing petition had been denied December 16, 2005, Affiant acted with due speed and diligence to bring the failed notice to the attention of Court Officials. All Affiant's efforts to redress the failed notice requirement were denied by the Courts of Criminal Appeals and Supreme Court. Petitioner could not have reasonably and timely submitted the Claim to Alabama Supreme Court without notice that the Rehearing petition had been denied December 16, 2005.

I deny I received the Court's order or any such notice that the rehearing petition had been denied. I further swear all mail coming into my mailbox has been ritualistically retrieved, personally, in great anticipation of the court's decision and Certiorari review in

the Alabama Supreme Court. Unless the pro-se unlearned Affiant is required to continually contact the Court of Criminal, Affiant could not have acted until noticed. The affiant's issue(s) have been explicitly decided in the Federal Courts and will be circumvented by the respondents asserted procedural default through no fault, neglect, and/or considered design of the Affiant.

To this present day, affiant has not received the order or opinion respecting affiant's rehearing petition. As a result, affiant is denied due process and equal protection guaranteed by the Fourteenth Amendment to the United States Constitution and the same said Constitutional deprivation, thus far, is uncontroverted by the Respondents.

Done this day, April 28, 2006.



Jeffery Baker Jr,
1353 County Road 3348
Brundidge, Al 36010
334-735-3548

BEFORE ME, the undersigned NOTARY PUBLIC did personally appeared Jeffery Baker Jr, who states to me he is aware of the contents of the affidavit in support of Reply and that he executes the same voluntarily.

Sworn to and subscribed before me this 28th day of April 2006.


NOTARY PUBLIC

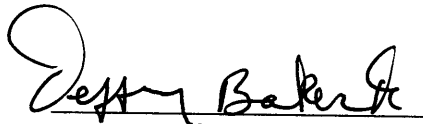
My Commission Expires: _____

Nichelle W. Simmons, Notary Public
Dike County, State of Alabama
Commission Expires on 3-23-10

CERTIFICATE OF SERVICE

I hereby certify that I have this day, April 28, 2006, served the forgoing Affidavit on the Attorney of Record for the Respondents, by United States mail, with the postage pre-paid, affixed thereto, and properly addressed to him as follows:

Mr. Cecil G. Brendle Jr.,
Assistant Attorney General
11 South Union Street
Montgomery, Al 36130-0152


Jeffery Baker Jr,